

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

JAMES PRESTON SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00285

THE UNITED STATES, et al.,

Defendants.

**MEMORANDUM OPINION**

Pending before the Court is Petitioner's Petition for Writ of Habeas Corpus [Docket 1]. By Standing Order entered August 1, 2006, and filed in this case on May 7, 2007, this action was referred to Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation (PF&R) pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge submitted a joint PF&R [Docket 4] on March 19, 2008, addressing Petitioner's filings in three cases, including this one.\* In the PF&R, the magistrate judge recommended that this Court find that each of the pending matters amounts to a request for collateral review of Petitioner's conviction, find that the requests are untimely and successive, find that Petitioner is barred from again challenging the felon in possession and armed career criminal statutes and their application to his criminal case in habeas corpus, and dismiss the case.

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\* The PF&R addressed Petitioner's Petition for Writ of Habeas Corpus filed in Case Nos. 5:07-cv-00225; 5:07-cv-00285; and 5:07-cv-00526.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In this case, pursuant to 28 U.S.C. § 636(b)(1)(B), and Rules 6(e) and 72(b) of the Federal Rules of Civil Procedure, objections to the PF&R were due by April 4, 2008. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 4] in its entirety, **FINDS** that the pending matter amounts to a request for collateral review of Petitioner's conviction, **FINDS** that the request is untimely and successive, **FINDS** that Petitioner is barred from challenging the felon in possession and armed career criminal statutes and their application to his criminal case in habeas corpus, **DENIES** Petitioner's Petition for Writ of Habeas Corpus [Docket 1], and **DISMISSES** the case. A Judgment Order will enter this day implementing the rulings contained herein.

ENTER: June 13, 2008



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE